

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

FIFTY STATES DISTRIBUTORS, INC.,)
d/b/a/ Martino's Master Dry Cleaners; and)
RED MAPLE MANAGEMENT, LLC.)
)
Plaintiffs,) No:
)
v.)
)
MARYLAND CASUALTY COMPANY;)
and ZURICH AMERICAN INSURANCE)
COMPANY,)
)
Defendants.)
)
)

NOTICE OF REMOVAL

To: The United States District Court for the Eastern District of Wisconsin.

Plaintiffs' counsel: Ted A. Warpinski
Christopher M. Meuler
M. Andrew Skwierawski
Friebert, Finerty & St. John, S.C.
330 East Kilbourn Avenue
Milwaukee, WI 53202

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Zurich American Insurance Company, erroneously sued as Maryland Casualty Company, and Defendant Zurich American Insurance Company, by and through its attorneys, Mark S. Nelson of Nelson, Connell & Slein, S.C., hereby files this *Notice of Removal* of the above-captioned matter from the Circuit Court of Kenosha County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin. In support of this *Notice*, Defendant Zurich American Insurance Company, erroneously sued as Maryland Casualty Company, and Defendant Zurich American Insurance Company respectfully state as follows:

1. On June 22, 2017, Plaintiffs Fifty States Distributors, Inc. (“Fifty States”) and Red Maple Management, LLC (“Red Maple”) initiated the above-captioned action by filing a Complaint for money judgment and declaratory judgment in the Circuit Court of Kenosha County, Wisconsin against Zurich American Insurance Company and Maryland Casualty Company. A copy of Plaintiffs’ Complaint is attached hereto as **Exhibit A**.

2. Zurich American Insurance Company is successor by merger to Maryland Casualty Company. Zurich American Insurance Company and Maryland Casualty Company are hereinafter referred to, collectively, as “Zurich.”

3. On June 28, 2017, Zurich’s registered agent was served with Plaintiffs’ Complaint and Summons. (See **Exhibit B**, Notice of Service of Process on Zurich’s registered agent).

4. Removal, based on diversity of citizenship, is proper where all of the parties properly joined and served as defendants are diverse and the amount in controversy has been met.

5. The United States District Court for Eastern District of Wisconsin has jurisdiction over this action pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332 for the following reasons:

- a. Based on the investigation Zurich has been able to undertake to this point, Red Maple is a limited liability company organized and existing under the laws of Indiana, with its principal place of business in the State of Indiana, at 4600 Northwest Plaza West Drive, Zionsville, IN.
 - (i) Based on the investigation Zurich has been able to undertake at this point (including review of public records that are available on-line through the Indiana Secretary of State’s Office), Michael L. Einterz, Jr. is the sole member of Red Maple.

- (ii) Based on the investigation Zurich has been able to undertake at this point (including review of public records that are available on-line through Westlaw's public records search), Michael L. Einterz, Jr. is a citizen of the State of Indiana.

For these reasons, for purposes of assessing diversity of citizenship, Red Maple is a citizen of Indiana. As of the date of filing this notice of removal, Zurich has no information that Red Maple has any current members that are citizens of Illinois or New York.

- b. Based on the investigation Zurich has been able to undertake to this point, Fifty States is a corporation duly organized and existing under the laws of Wisconsin, with its principal place of business in the State of Wisconsin, at 7513 41st Avenue, Kenosha, Wisconsin. For these reasons, for purposes of assessing diversity of citizenship, Fifty States is a citizen of Wisconsin.
- c. Defendant Zurich is a corporation duly organized and existing under the laws of New York, with its principal place of business in the State of Illinois, at 1299 Zurich Way, Schaumburg, Illinois. For these reasons, for purposes of assessing diversity of citizenship, Zurich is a citizen of New York and Illinois.
- d. According to Plaintiffs' Complaint, Plaintiffs seek to recover from Zurich certain amounts that Fifty States claims to have paid in connection with certain alleged environmental contamination at two dry-cleaning locations allegedly owned and operated by Fifty States. It is Zurich's good faith belief that the amount in controversy in this action exceeds \$75,000 exclusive of interest and costs. On or about May 1, 2017, Plaintiffs' attorney sent an e-mail to Zurich to which a document was attached that alleged that Plaintiffs' "total claim" was \$627,835.77. Based on this May 1, 2017 e-mail and the attached document, the amounts in dispute here alone exceed \$75,000, exclusive of interest and costs.¹

6. Therefore, this lawsuit is removable from state court to the United States District Court for the Eastern District of Wisconsin, pursuant to 28 U.S.C. §1441 (a) and 28 U.S.C. §1332 (a)(2), (c)(1). Based on Zurich's investigation to this point, complete diversity of citizenship exists among the plaintiffs and the defendant, and the amount in controversy exceeds \$75,000 exclusive of interests and costs.

¹ In reciting the sums the Plaintiffs seek to recover, Zurich does not admit liability or coverage for any such sums.

7. 28 U.S.C. § 1446 imposes a 30 day limitation upon a defendant to timely file a notice of removal. Zurich's Notice of Removal is timely because it was filed within thirty days after the receipt by Zurich, through service, of the initial pleading setting forth the removable claims for relief. See 28 U.S.C. § 1446(b).

8. Written notice of the filing of the Notice of Removal has been served on Plaintiffs through their counsel, as required by 28 U.S.C. §1446 (d).

9. A true copy of this Notice of Removal has been filed with the Circuit Court of Kenosha County, Wisconsin, as provided by 28 U.S.C. §1446 (d).

10. By filing this Notice of Removal, Defendant Zurich, does not waive any jurisdictional objections or any other defenses that are available.

WHEREFORE, Defendant, Zurich American Insurance Company, as successor by merger to Maryland Casualty Company, and Defendant, Zurich American Insurance Company respectfully request that this civil action be removed from the Circuit Court of Kenosha County, Wisconsin, and that this Court accept jurisdiction over this action, and proceed before this Court as an action properly removed.

Respectfully submitted,

/s/ Mark S. Nelson
Mark S. Nelson
SBN: 1014760
Attorney for Defendants

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **July 27, 2017**, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and the documents identified herein were mailed to:

Ted A. Warpinski
Christopher M. Meuler
M. Andrew Skwierawski
Firebert, Finerty & St. John, S.C.
330 East Kilbourn Avenue
Milwaukee, WI 53202

/s/ Mark S. Nelson _____

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